

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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October 5, 2005

Memo To Counsel Re: Michelle Heaps, et vir. V. Willard P. Amoss, M.D., et al.
Civil No. JFM-04-208

Dear Counsel:

I have reviewed the papers submitted in connection with the motion for summary judgment filed by defendants Upper Chesapeake Medical Center, Inc., Upper Chesapeake Medical Center, and Fallston General Hospital.

Summary judgment motions must be decided on the record as it exists at the time the motion is briefed. The mere fact that a witness might spontaneously testify at trial, despite the parties' agreement to the contrary, that another party is at fault does not justify the denial of the motion. Of course, if Drs. Amoss or Lanphear, or their designated experts, were spontaneously to testify at trial that the graspers contributed to the outcome of the surgery (or that the Upper Chesapeake defendants were otherwise at fault) in violation of the stipulation that has been signed by counsel for Drs. Amoss and Lanphear, I would immediately order that the testimony be stricken. I would also instruct the jury that no cognizable contention is being made that the Upper Chesapeake defendants breached the standard of care or that the graspers contributed to the outcome of the surgery.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge